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Attorneys for Complainant

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. AC-2003-29

CESAR ESTRADA GUERRERO
840 Tuolumne Street
Vallejo, CA 94590
Certified Public Accountant
Certificate No. CPA 53774

**STIPULATED SETTLEMENT AND
ORDER IN RE: CESAR E.
GUERRERO, CPA 53774**

and

VILLANUEVA & GUERRERO
2103 Redwood Street, Suite 206
Vallejo, CA 94590
Accountancy Partnership No. PAR 6297

Respondents.

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding that the following matters are true:

PARTIES

1. Carol Sigmann, Complainant, is the Executive Officer of the California Board of Accountancy. She brought this action solely in her official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State of California, by Jeanne C. Werner, Deputy Attorney General.

2. Cesar E. Guerrero, Respondent, is representing himself in this proceeding, and has chosen not to exercise his right to be represented by counsel.

3. On or about September 22, 1989, the California Board of Accountancy issued Certified Public Accountant Certificate Number CPA 53774 to Cesar Estrada Guerrero ("Respondent Guerrero" or "Guerrero"). The Certified Public Accountant Certificate was expired from January 1, 1993 to June 6, 1993, and from January 1, 1997 to March 2, 1997, due to non-payment of fees and failure to certify compliance with required continuing education. The certificate was in full force and effect at all times relevant to the charges brought herein and is renewed through December 31, 2004.

JURISDICTION

4. Accusation No. AC-2003-29 was filed before the California Board of Accountancy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 5, 2004. Respondent, in his individual capacity, timely filed a Notice of Defense contesting the Accusation.¹ A copy of Accusation No. AC-2003-29 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. AC-2003-29. Respondent also has carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up

1. Respondent Guerrero also filed a timely Notice of Defense on behalf of the partnership. Those charges are not addressed by this Stipulation.

1 each and every right set forth above as they relate to his CPA certificate.

2 CULPABILITY

3 8. Respondent admits the truth of each and every charge and allegation in
4 Accusation No. AC-2003-29, and agrees that cause exists for discipline of his CPA Certificate
5 No. 53774. Respondent hereby gives up his right to contest that cause for discipline exists based
6 on those charges.

7 9. Respondent understands that by signing this stipulation he enables the
8 Board to issue an order revoking his CPA Certificate without further process.

9 CONTINGENCY

10 10. This stipulation shall be subject to approval by the California Board of
11 Accountancy. Respondent understands and agrees that counsel for Complainant and the staff of
12 the California Board of Accountancy may communicate directly with the Board regarding this
13 stipulation and settlement, without notice to or participation by Respondent. By signing the
14 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
15 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
16 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
17 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
18 action between the parties, and the Board shall not be disqualified from further action by having
19 considered this matter.

20 11. The parties understand and agree that facsimile copies of this Stipulated
21 Settlement and Order, including facsimile signatures thereto, shall have the same force and effect
22 as the originals.

23 12. In consideration of the foregoing admissions and stipulations, the parties
24 agree that the Board may, without further notice or formal proceeding, issue and enter the
25 following Order:

26 ORDER

27 IT IS HEREBY ORDERED that Certified Public Accountant Certificate Number
28 CPA 53774, issued to Respondent Cesar E. Guerrero, is revoked.


1 13. Respondent Guerrero shall lose all rights and privileges as a Certified
2 Public Accountant in California as of the effective date of the Board's Decision and Order.
3 Respondent shall cause to be delivered to the Board both his wall and pocket license certificate
4 on or before the effective date of the Decision and Order.

5 14. Respondent Guerrero understands and agrees that if he ever applies for
6 licensure or petitions for reinstatement in the State of California, pursuant to Code Section
7 5107(j), the Board shall require his payment of its investigation and enforcement charges
8 associated with this proceeding, in the amount of \$26,474.00, prior to a petition or application
9 being considered by the Board.

10 ACCEPTANCE

11 I have carefully read the Stipulated Settlement and Order. I understand the
12 stipulation and the effect it will have on my CPA License. I enter into this Stipulated Settlement
13 and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and
14 Order of the California Board of Accountancy.

15 DATED: December 30, 2004.

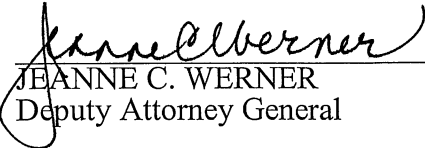
16 
17 CESAR E. GUERRERO
Respondent

18 ENDORSEMENT

19 The foregoing Stipulated Settlement and Order is hereby respectfully submitted
20 for consideration by the California Board of Accountancy of the Department of
21 Consumer Affairs.

22 DATED: February 8, 2005.

23 BILL LOCKYER, Attorney General
24 of the State of California

25 
26 JEANNE C. WERNER
Deputy Attorney General

27 Attorneys for Complainant

28 DOJ Docket Number/Matter ID: SF2003AD0281 and SF2003AD0000
90013859.wpd

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. AC-2003-29

CESAR ESTRADA GUERRERO
840 Tuolumne Street
Vallejo, CA 94590
Certified Public Accountant
Certificate No. CPA 53774

and

VILLANUEVA & GUERRERO
2103 Redwood Street, Suite 206
Vallejo, CA 94590
Accountancy Partnership No. PAR 6297,

Respondents.

DECISION AND ORDER

The attached Stipulation and Order, revoking CPA License No. 53774, is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on April 22, 2005.

It is so ORDERED March 23, 2005.



Renata M. Sos, President
FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 BILL LOCKYER, Attorney General
of the State of California
2 JEANNE C. WERNER, State Bar No. 93170
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Facsimile: (510) 622-2121
6

7 Attorneys for Complainant

8
9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

ACCUSATION

12 CESAR ESTRADA GUERRERO
13 840 Tuolumne Street
Vallejo, CA 94590

Case No. AC-2003-29

14 Certified Public Accountant Certificate No. CPA
15 53774

16 and

17 VILLANUEVA & GUERRERO CPA's
2103 Redwood Street, Suite 210
18 Vallejo, CA 94590

19 Accountancy Partnership No. PAR 6297

20 Respondents.

21
22 Complainant alleges:

23 **PARTIES**

24 1. Complainant Carol Sigmann brings this Accusation solely in her official capacity
25 as the Executive Officer of the California Board of Accountancy, Department of Consumer
26 Affairs.

27 2. On or about September 22, 1989, the California Board of Accountancy issued
28 Certified Public Accountant Certificate Number CPA 53774 to Cesar Estrada Guerrero

1 ("Respondent Guerrero" or "Guerrero"). The Certified Public Accountant Certificate was
2 expired from January 1, 1993 through June 6, 1993, and from January 1, 1997 to May 31, 1997
3 due to non-payment of fees and failure to certify compliance with required continuing education.
4 The certificate was in full force and effect at all times relevant to the charges brought herein and
5 is renewed through December 31, 2004.

6 3. On or about October 10, 1997, the California Board of Accountancy issued
7 Accountancy Partnership Certificate Number PAR 6297 to Guerrero & Aquinto, CPA's. On
8 May 17, 1998, the firm name changed to Villanueva, Guerrero & Aquinto, CPA's, and, on
9 September 1, 1998, David Aquinto withdrew from the partnership. A name change was approved
10 on November 21, 1998, to the current name, Villanueva & Guerrero, CPA's ("Respondent
11 Partnership" or "Partnership"). The partners are Respondent Guerrero and Cris Villanueva (CPA
12 37981). The Accountancy Partnership Certificate expired on December 31, 1998, and was not
13 valid until its renewal on February 18, 1999. It was otherwise in full force and effect at all times
14 relevant to the charges brought herein and is renewed through October 31, 2005.

15 **JURISDICTION, STATUTES & REGULATIONS**

16 4. This Accusation is brought before the California Board of Accountancy (Board),
17 Department of Consumer Affairs, under the authority of the following laws. All section
18 references are to the Business and Professions Code ("Code") unless otherwise indicated.

19 5. Section 5100 of the Code provides in pertinent part that after notice and hearing
20 the Board may revoke, suspend or refuse to renew any permit or certificate granted under Article
21 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may
22 censure the holder of that permit or certificate for unprofessional conduct.

23 6. Section 5100(c) of the Code provides in pertinent part that dishonesty and gross
24 negligence constitute unprofessional conduct within the meaning of Code section 5100, above.

25 7. Section 5100(g) of the Code provides in pertinent part that willful violation of this
26 chapter or any rule or regulation promulgated by the Board under the authority granted under the
27 Accountancy Act constitutes unprofessional conduct within the meaning of Code section 5100,
28 above.

1 8. Code section 5101 provides, *inter alia*, that a partnership permit may be
2 disciplined for any of the causes enumerated in Code section 5100.

3 9. Section 5062 of the Code provides that a licensee shall issue a report which
4 conforms to professional standards upon completion of a compilation, review or audit of
5 financial statements.

6 10. Title 16, California Code of Regulations ("CCR"), section 52¹ provides, *inter*
7 *alia*, that a licensee shall provide true and accurate information and responses to Board requests
8 for information or documents.

9 11. Title 16, CCR section 58 provides that licensees engaged in the practice of public
10 accountancy shall comply with all applicable professional standards, including but not limited to
11 generally accepted accounting principles and generally accepted auditing standards.

12 12. Title 16, CCR section 69(c) provides in pertinent part that any false or misleading
13 statement, made by a licensee as to material matters in the certification of an applicant's
14 experience, shall constitute a violation of the Accountancy Act.

15 13. Title 16, CCR section 87 provides in pertinent part that all licensees shall, as a
16 condition of active status license renewal, complete at least 80 hours of qualifying continuing
17 education in the two-year period immediately preceding license expiration and that licensees who
18 engage in planning, directing, conducting substantial portions of field work, or reporting on
19 financial or compliance audits of a governmental agency shall also complete 24 of the 80
20 required hours in the areas of governmental accounting, auditing or related subjects.

21 14. Section 5107(a) of the Code provides in pertinent part that the executive officer of
22 the Board may request the administrative law judge, as part of the proposed decision in a
23 disciplinary proceeding, to direct any holder of a permit or certificate found guilty of
24 unprofessional conduct in violation of subdivision (c) of Section 5100 to pay to the Board all
25 reasonable costs of investigation and prosecution of the case, including, but not limited to,

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27 1. References to sections of Title 16 of the California Code of Regulations will also be referred to
28 herein as "Board rule." Thus, Title 16, California Code of Regulations, section 52 will be referenced
as "Board rule 52."

attorneys' fees incurred prior to the commencement of the hearing.

APPLICABLE PROFESSIONAL STANDARDS

15. Professional standards or standards of practice² pertinent³ to this accusation and the audit engagements in issue include, without limitation:

A. **Generally Accepted Auditing Standards ("GAAS")**, issued by the Auditing Standards Board (ASB) of the American Institute of Certified Public Accountants (AICPA). The ten generally accepted auditing standards⁴ are discussed in the Statements on Auditing Standards ("SAS") and are codified, by "AU" number, in the AICPA's *Codification of Statements on Auditing Standards*. Five of the ten "basic" or "fundamental" GAAS (General Standards, Standards of Field Work, and Standards of Reporting) are relevant herein and described immediately below. Relevant professional standards, without limitation, include:

GAAS - "General" Standards

(1) Due professional care. The **third "General Standard"** of the ten "basic" generally accepted auditing standards (AU 150.02) provides that due professional care is to be exercised in the performance of the audit and the preparation of the report." AU § 230.02 further defines the third General Standard, stating in pertinent part that "due professional care imposes a responsibility upon each professional within an independent auditor's organization to observe the standards of field work and reporting. Professional skepticism is a critical component of the

2. "Generally accepted accounting principles" (GAAP) are the basic postulates and broad principles of accounting pertaining to business enterprises. These principles establish guidelines for measuring, recording, and classifying the transactions of a business entity. "Generally accepted auditing standards"(GAAS) are the standards prescribed for the conduct of auditors in the performance of an examination of management's financial statements. See *SEC v. Arthur Young & Co.*, 590 F.2d 785, 788 nn. 2 & 4 (9th Cir. 1979).

3. All references herein to standards and other authoritative literature are to the versions in effect at the time the audit engagements were being performed.

4. There are ten basic or fundamental standards, and the Statements on Auditing Standards are, for the most part, devoted to elaborating on those standards. The "basic" standards are codified at AU § 150. Among these ten basic auditing standards are three "General" standards, three standards of Fieldwork, and four Reporting standards, all of which are further described in the (other) SAS's. The auditing standards most relevant herein are described in Paragraph 15.A. in this Accusation. However, this listing is not exclusive.

1 audit approach (e.g., AU §§ 230.07 and 316.13).

2 **GAAS - "Field Work" Standards**

3 (2) Planning and Supervision: The **first "Standard of Field Work"** (AU §
4 150.02) provides that "The work is to be adequately planned and assistants, if any, are to be
5 properly supervised." AU § 311.13 further explains the first standard of fieldwork, above,
6 stating in pertinent part that "The work performed by each assistant should be reviewed to
7 determine whether it was adequately performed and to evaluate whether the results are consistent
8 with the conclusions to be presented in the auditor's report."

9 (3) Evidential Matter: The **third "Standard of Field Work"** (AU § 150.02)
10 provides that "Sufficient competent evidential matter is to be obtained through inspection,
11 observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the
12 financial statements under audit."

13 (a.) AU § 326.02 further states, in pertinent part, that "Most of the
14 independent auditor's work in forming his or her opinion on financial statements consists of
15 obtaining and evaluating evidential matter concerning the assertions in such financial
16 statements."

17 (b) AU § 312.25 states in pertinent part that "In determining the
18 nature, timing, and extent of auditing procedures to be applied to a specific account balance or
19 class of transactions, the auditor should design procedures to obtain reasonable assurance of
20 detecting misstatements that he or she believes, based on the preliminary judgment about
21 materiality, could be material, when aggregated with misstatements in other balances or classes,
22 to the financial statements taken as a whole."

23 (c) AU § 339.05 states in pertinent part that "Working papers
24 ordinarily should include documentation showing that the audit evidence obtained, the auditing
25 procedures applied, and the testing performed have provided sufficient competent evidential
26 matter to afford a reasonable basis for an opinion ..."

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28 ///

GAAS - "Reporting" Standards

(4) Auditor's Report. The **first "Standard of Reporting"** (AU § 150.02) provides that "The report shall state whether the financial statements are presented in accordance with generally accepted accounting principles." This is further defined in AU § 508.08, which provides that the fourth basic element of the auditor's standard report is the inclusion of a statement that "the audit was conducted in accordance with generally accepted auditing standards and an identification of the United States of America as the country of origin of those standards."

(5) Auditor's Report. The **third "Standard of Reporting"** (AU § 150.02) provides that "Informative disclosures in the financial statements are to be regarded as reasonably adequate unless otherwise stated in the report."

B. **Generally Accepted Governmental Auditing Standards or "GAGAS"**, set forth in *Government Auditing Standards - Standards for Audit of Governmental Organizations, Programs, Activities and Functions*, and issued by the Comptroller General of the United States, United States General Accounting Office, 1994 rev. as amended (the "Yellow Book"). For a "Yellow Book" audit, these standards, **in addition to requiring observance of the GAAS** requirements set forth above, provide supplemental working paper documentation requirements and additional reporting requirements, and require quality reviews, as set forth hereinafter. Among specific GAGAS standards pertinent herein are, without limitation:

(1) GAGAS Supplemental Working Paper Requirements: Section 4.35 of Generally Accepted Government Auditing Standards ("GAGAS") provided that "Working papers should contain sufficient information to enable an experienced auditor having no previous connection to the audit to ascertain from them the evidence that supports the auditors' significant conclusions and judgments."

(2) Quality Control/Review: Section 3.31 provides that "Each audit organization conducting audits in accordance with these standards should have an appropriate internal quality control system in place and undergo an external quality control review."

(3) Quality Control/Review: Section 3.33 provides that "Organizations conducting audits in accordance with these standards should have an external quality review at

1 least once every 3 years by an organization not affiliated with the organization being reviewed.
2 [footnote omitted] The external quality control review should determine whether the
3 organization's internal quality control system is in place and operating effectively to provide
4 reasonable assurance that established policies and procedures and applicable auditing standards
5 are being followed."

6 (4) Continuing Education Requirements: Section 3.6 requires, *inter alia*, that
7 each auditor responsible for planning, directing, conducting, or reporting on audits under
8 GAGAS complete, every 2 years, at least 80 hours of continuing education and training, of which
9 at least 24 hours should be in subjects directly related to the government environment and to
10 government auditing. Section 3.7 makes the audit organization responsible for establishing and
11 implementing a program to ensure that auditors meet the continuing education and training
12 requirements set forth in Section 3.6, and requires that the audit organization maintain
13 documentation of the education and training completed.

14 (5) Additional Compliance Report Required: Section 5.3 incorporates the
15 reporting requirements of GAAS and prescribes additional standards, including the requirement
16 to report on compliance with laws and regulations (see sections 5.15 through 5.28).

17 C. Audits of State and Local Governmental Units, an Audit and Accounting Guide
18 of the AICPA, which provides authoritative guidance (related to both GAAS and GAAP) for the
19 audits of governmental entities ("Audit Guide"). Relevant herein, without limitation, are:

20 (1) AAG-SLG § 18.01 provides in pertinent part that "The type of report [of
21 the audit of the governmental unit] the independent auditor issues depends on the contents of the
22 [governmental unit's] financial statements and on the scope and results of the audit [of the
23 governmental unit]."

24 (2) AAG-SLG § 15.30 provides that "The federal government considers the
25 various recognized Indian tribes as if they are states. Therefore, Indian tribes are usually
26 accounted for as primary government or stand-alone governments. Financial statements for
27 Indian tribes generally will include all the various fund types found in general-purpose financial
28 statements (GPFS) for other general-purpose governmental units."

1 (3) AAG-SLG § 18.34 provides in pertinent part that “ ... GPFS [i.e., general-
2 purpose financial statements of governmental units] must present all applicable fund types and
3 account groups in the governmental combined statement format to conform to GAAP [i.e.,
4 generally accepted accounting principles].”

5 D. **OMB (Federal Office of Management and Budget) Circular A-133, “Audits**
6 **of Institutions of Higher Education and Other Nonprofit Institutions**”, applicable to audits
7 of all non-profit institutions - - governments and agencies, federal and non-federal - - receiving
8 federal funds in excess of \$300,000.

9 OMB Circular A-133 *Compliance Supplement (March 2001) [F. Equipment and Real*
10 *Property Management]* provides in pertinent part:

11 “Equipment records shall be maintained, a physical inventory of equipment shall
12 be taken at least once every two years and reconciled to the equipment records, an
13 appropriate control system shall be used to safeguard the equipment, and
14 equipment shall be adequately maintained. ...” [¶] “Audit Objectives. ... 2.
Determine whether the non-Federal entity maintains proper records for equipment
and adequately safeguards and maintains equipment. ...”

15 E. **Generally Accepted Accounting Principles (“GAAP”)**, derived from various
16 authoritative sources. AU § 411 provides guidance to the auditor concerning the “Meaning of
17 ‘Present Fairly in Conformity with GAAP.’” This guidance relates to the auditor’s duties under
18 both GAAS and GAAP. AU § 411.18 sets forth the “GAAP Hierarchy Summary.” Generally
19 Accepted Accounting Principles relevant herein include, without limitation:

20 (1) Statements and Interpretations (SFAS or FAS) issued by the Financial
21 Accounting Standards Board⁵ (FASB). FAS and APB Opinions (see paragraph (2) immediately
22 following) are codified by topic in the AICPA’s publication *Current Text*. These
23 pronouncements are the most authoritative source for GAAP. The statements pertinent herein
24 include, without limitation, those in FAS 95.

25 ///

26

27 5. The FASB is the private sector organization which has been primarily responsible for
28 promulgating GAAP since 1973. Before the FASB, the Accounting Principles Board (APB) issued
opinions, from 1959 through 1973.)

1 (2) Statements issued by the Accounting Principles Board⁶ of the AICPA,
2 including *APB No. 20*.

3 (3) Descriptions and recommendations regarding specialized accounting and
4 reporting principles and practices for governmental units as included in the previously referenced
5 AICPA Audit and Accounting Guide, *Audits of State and Local Governmental Units*.

6 F. **Statements on Standards for Accounting and Review Services ("SSARS")**,
7 codified by the AICPA by "AR" number, which apply to the performance of compilation and
8 review services. Pertinent herein is SSARS No. 1 (AR § 100.04 and AR § 100.45).

9 **FOR CAUSES FOR DISCIPLINE**

10 **Audit of Torres-Martinez Tribal Temporary**
11 **Assistance to Needy Families Program - FYE 9/30/01**

12 16. On or about October 11, 2001, Respondent Partnership entered a contract to
13 perform an independent audit, for the year ended September 30, 2001, of the financial statements
14 of the (federally funded) Torres-Martinez Tribal Temporary Assistance to Needy Families
15 ("TANF") program (hereinafter the "TMT TANF Audit"). Said audit was to be performed by
16 Respondent Partnership with Respondent Guerrero as managing partner. Respondents represent
17 that they timely created working papers in support of the above independent audit engagement
18 for the Torres-Martinez Tribal TANF Program. Respondents' field work was completed on or
19 about November 9, 2001.

20 **Gross Negligence in Practice of Public Accountancy**
21 **(Bus. & Prof. Code § 5100(c))**

22 17. Incorporating by reference the matters alleged in paragraph 16, Respondents'
23 licenses are subject to discipline in that their performance of the TMT TANF Audit was
24 characterized by extreme departures from applicable professional standards. Respondents failed
25 to gather, and to document, sufficient evidentiary matter, including performing appropriate audit
26 procedures and tests, to afford a basis for their unqualified audit opinion. Among the
27

28

6. See footnote 4.

1 professional standards from which they deviated are:

2 A. The working papers provided to the Board are defective in two major respects.
3 First, the working papers do not document the performance of audit procedures which are
4 essential in this audit engagement. Second, the working papers contain unsupported statements
5 which are contradicted by the findings in the (required) reports which were issued regarding
6 Compliance and Internal Control, and A-133 Compliance and Internal Control over Compliance.⁷

7 B. Respondents' working papers indicated that they performed test procedures
8 related to the disbursements of the TANF. Respondents provided the scope of their test
9 procedures, including the selection of "all checks over one thousand seven hundred dollars
10 (\$1,700.00)". However, Respondents' working papers failed to address at least seven (7) items
11 that were within the scope of their stated audit test procedures.

12 C. Respondents' working papers included the documentation of test procedures to
13 determine the presence of unrecorded liabilities. However, the tests documented in Respondents'
14 working papers were performed on a check register report with a reference date of July 22, 2002,
15 which was well after the audit work should have been completed, in that the auditor's report was
16 completed and issued on November 9, 2001. As a result, Respondents' working papers do not
17 support the testing of the unrecorded liabilities prior to the issuance of the audit report.

18 D. Respondents' working papers contained copies of federal and state quarterly
19 payroll tax reports and a wage summary showing that gross wages totaled \$347,661.99.
20 Additionally, the respondents' testing documentation determined that total gross payroll was
21 \$343,752.00 (gross less salary reductions of \$3,910.00). However, only \$252,945.00 in salaries
22 and wages were reported on the TANF's financial statements. Respondents assessed the
23 materiality level at \$20,636.00. Respondents' working papers failed to document or address
24 Respondents' evaluation, if any, of the \$94,716.00 difference between the figures in the working
25 papers and the figures reported on the financial statement. The difference, \$94,716.00, is an
26 amount significantly greater than Respondents' own previously established materiality level.

27 _____
28 7. The impact of these defects on reporting requirements is covered in the section which follows,
beginning with paragraph 22 (Reporting Violations).

1 E. Respondents failed to adequately examine, or conduct procedures regarding, the
2 TANF's expenses of \$526,653.00 for equipment purchases, nor did Respondents adequately
3 examine, or conduct procedures regarding, the TANF's fixed assets of \$67,866.00. Both these
4 amounts were material to the TANF's financial statements and were above respondents' own
5 assessed materiality level. Respondents' working papers fail to document adequate procedures,
6 and are inadequate to support the auditor's conclusion.

7 18. The material defects in respondents' working papers identified in paragraph 17
8 above, constitute non-compliance with professional standards, including AU § 150 (third
9 standard of fieldwork), AU §§ 312.25, 326.02, 339.05, *Yellow Book* § 4.35, and OMB A-133
10 Compliance Supplement (March 2001), Equipment and Real Property Management. The defects
11 evidence a lack of due professional care as required by AU § 150 (third general standard).

12 19. Respondents' audit report for the Torres-Martinez Tribal Temporary Assistance to
13 Needy Families Program and the underlying related working papers, with the material defects
14 and non-compliance with professional standards as set forth in paragraphs 16 through 19, above,
15 constitutes gross negligence in the practice of public accountancy and therefore unprofessional
16 conduct within the meaning of Code section 5100(c).

17 **Failure to Comply with Professional Standards**
18 **(Bus. & Prof. Code § 5100(g)/Board Rule 58)**

19 20. Complainant realleges paragraphs 15 through 19, above, and incorporates them
20 herein by reference as if fully set forth at this point.

21 21. Respondents' conduct as set forth in paragraphs 15 through 20, above, constitutes
22 the failure to comply with professional standards within the meaning of 16 CCR § 58 and
23 therefore unprofessional conduct within the meaning of Code section 5100(g).

24 **Gross Negligence in Practice of Public Accountancy - Reporting Violations**
25 **(Bus. & Prof. Code § 5100(c))**

26 22. The following material defects were noted regarding Respondents' reporting
27 responsibilities:

28 ///

1 (A) Respondents provided an unqualified opinion in their audit report for the
2 financial statements of the TANF for the year ended September 30, 2001. However, the financial
3 statements and note disclosures thereto were inadequate in several respects. For example, the
4 financial statements and note disclosures thereto represented that the TANF was a non-profit
5 organization and the TANF's assets, liabilities, and net assets were presented accordingly.
6 However, the TANF is actually comprised of Indian tribes, and its financial presentation should
7 have been as a tribal government with fund types and related disclosures applicable to such a
8 governmental entity. Respondents failed to modify their report due to the improper financial
9 statement presentation.

10 (B) Respondents failed to include in their report a basic element of the
11 auditor's standard report, that is, an identification of the United States of America as the country
12 of origin of the generally accepted accounting principles utilized in their audit report.

13 23. The material defects in respondents' audit report identified in paragraph 22,
14 above, constitute extreme departures professional standards AU § 150 (first and third standards
15 of reporting), AU § 508.08 (basic elements of auditor's standard report), and AAG-SLG §§
16 15.30, 18.01, and 18.34. The defects evidence a lack of due professional care in the preparation
17 of the report as required by AU § 150 (third general standard).

18 24. Respondents' conclusion, in the compliance report, that there were no instances of
19 non-compliance with applicable rules and regulations, is not supported by their audit procedures,
20 as set forth more particularly in paragraph 17.E. above (re: equipment purchases and fixed
21 assets), resulting in an extreme departure from the Yellow Book requirements for reporting on
22 compliance with laws and regulations.

23 25. Incorporating by reference the matters set forth in paragraphs 22 through 24
24 above, Respondents are both subject to discipline under Code section 5100(c) in that they were
25 each, and were collectively, grossly negligent in the performance of their duties with respect to
26 their auditor's report, and their report on compliance with laws and regulations, for each reason
27 set forth and for all of them.

28 ///

**Report Not Conforming to Professional Standards
(Bus. & Prof. Code §§ 5062 and 5100(g))
and
(Bus. & Prof. Code §5100(g)/Board Rule 58)**

26. Respondents' conduct as set forth in paragraphs 22 through 25, above, constitutes the failure to issue an audit report which conforms to professional standards upon completion of a compilation, review or audit of financial statements within the meaning of Code section 5062 and therefore unprofessional conduct within the meaning of Code section 5100(g).

27. Respondents' conduct as set forth in paragraphs 22 through 25, above, constitutes the failure to issue an audit report which conforms to professional standards upon completion of a compilation, review or audit of financial statements within the meaning of Board Rule 58 and therefore unprofessional conduct within the meaning of Code section 5100(g).

28. Respondents' conduct as set forth in paragraph 24, above, constitutes the failure to issue a compliance report which conforms to professional standards upon completion of a compilation, review or audit of financial statements within the meaning of Code section 5062 and therefore unprofessional conduct within the meaning of Code section 5100(g).

29. Respondents' conduct as set forth in paragraph 24, above, constitutes the failure to issue a compliance report which conforms to professional standards upon completion of a compilation, review or audit of financial statements within the meaning of Board rule 58 and therefore unprofessional conduct within the meaning of Code section 5100(g).

**Audits of National Hispanic University FYE 2001
and Vallecitos CET, Inc. FYE 2001**

30. Respondents' licenses are subject to discipline in that supervision of the audits of National Hispanic University and Vallecitos CET, Inc. was characterized by extreme departures from applicable professional standards as follows.

31. Respondent Guerrero was the engagement partner with full supervisory responsibility for the audits performed by P. P.⁸, an employee of Respondent Partnership, for

8. The full names of all other relevant persons referred to herein will be made available to respondent upon a timely request for discovery.

1 National Hispanic University and for Vallecitos CET, Inc., each for the financial year ending
2 June 30, 2001. Respondent Guerrero failed to properly supervise audit employee P. P. in the
3 performance of the National Hispanic University and Vallecitos audit engagements. Respondent
4 Guerrero failed to review P. P.'s working papers during the course of the audit. Respondent
5 Guerrero failed to review P. P.'s working papers prior to Respondent's signing and issuing, on
6 behalf of the Respondent Partnership, the audit reports.

7 **Gross Negligence in Practice of Public Accountancy**
8 **(Bus. & Prof. Code § 5100(c))**

9 32. Incorporating by reference the matters alleged in paragraphs 30 and 31, above,
10 Respondent Guerrero's conduct constitutes gross negligence in the practice of public
11 accountancy and therefore unprofessional conduct within the meaning of Code section 5100(c).

12 **Failure to Comply with Professional Standards**
13 **(Bus. & Prof. Code § 5100(g)/Board Rule 58)**

14 33. Incorporating by reference the matters alleged in paragraphs 30 and 31, above,
15 Respondents' conduct constitutes non-compliance with professional standards AU § 150.02 (first
16 standard of fieldwork) and AU § 311.13, in violation of Board Rule 58. The defects evidence a
17 lack of due professional care as required by AU § 150 (third general standard).

18 34. Respondents' conduct as set forth in paragraph 33, above, constitutes the failure to
19 comply with professional standards within the meaning of 16 CCR § 58 and therefore
20 unprofessional conduct within the meaning of Code section 5100(g).

21 **Report Not Conforming to Professional Standards**
22 **(Bus. & Prof. Code §§ 5062 and 5100(g))**

23 35. Respondents' conduct as set forth in paragraphs 30, 31, and 33, above, constitutes
24 the failure to issue a report which conforms to professional standards upon completion of a
25 compilation, review or audit of financial statements within the meaning of Code section 5062
26 and therefore unprofessional conduct within the meaning of Code section 5100(g).

27 ///

28 ///

**False or Misleading Statement in Applicant's Experience Certification
(Bus. & Prof. Code § 5100(g) and Board Rule 69)**

36. Complainant realleges paragraph 31, above, and incorporates it herein by reference as if fully set forth at this point. Despite Respondent's failure to review the working papers of P. P. in the performance of the audits performed by P. P. as set forth above, Respondent nevertheless falsely or misleadingly stated "Yes" in his certification of P. P.'s audit experience in Board Form "E," submitted by respondent in support of P. P.'s application for licensure as a certified public accountant, in response to the question on *Form "E"* whether "In your opinion, ... the working papers [of the applicant] demonstrate[d] satisfactory knowledge of current practice standards and pronouncements of the profession."

37. Respondent's conduct as set forth in paragraph 36, above, constitutes a violation of Title 16, CCR section 69(c) and therefore unprofessional conduct within the meaning of Code section 5100(g).

**Review Engagement: KRW Enterprises
dba KW Construction as of December 31, 2000**

38. Respondent Guerrero, through Respondent firm Villanueva & Guerrero, performed a review engagement of KRW Enterprises, a corporation, dba KW Construction for the year ended December 31, 2000, and issued a review report.

39. Respondents' review report provided limited assurance regarding the balance sheet of KW Construction as of December 31, 2000, and the related statements of income and cash flows for the year then ended. However, the report contained departures from professional standards as follows:

A. The introductory paragraph failed to identify the accompanying "statement of income" as the "statement of income and changes in retained earnings" that was actually presented.

B. The introductory paragraph failed to identify the schedules of direct labor costs, direct overhead costs and general and administrative expenses that accompanied the financial statements.

1 C. The report was not modified for the exclusion of disclosures required by generally
2 accepted accounting principles, including those related to accounting policy for cash equivalents;
3 amount of cash paid for interest; and nature of the prior period adjustment.

4 D. The report was not modified for the improper presentation of cash flows. The net
5 loss was not reconciled to the cash used by operating activities. Notes payable to bank (\$54,122)
6 were included in the cash used by operating activities rather than financing activities.

7 40. Respondents' conduct as set forth in paragraph 39 constitutes non-compliance
8 with professional standards which include AR 100.45, APB No. 20, and FAS 95.

9 41. Respondent failed to obtain a management representation letter, resulting in non-
10 compliance with AR 100.29 and AR 100.38, and also resulting in an incomplete review, which is
11 not an adequate basis for issuing a review report.

12 42. Respondent failed to perform review procedures prior to the issuance of the
13 review report, as required by AR 100.27 and AR 100.28, relating to the accountant's
14 understanding of the entity's business and the accountant's inquiry and analytical procedures,
15 resulting in non-compliance with those requirements.

16 43. The Respondent firm presented to the Board a report and accompanying financial
17 statements for KW Construction for the year ended December 31, 2000, which differed from
18 those provided to the Board by a subsequent auditor for the client. In other words, the report and
19 financial statements originally presented to the client and the report subsequently provided to the
20 Board differed.

21 44. The changes in presentation included material changes to the presentation of
22 expenses and cash flows from operations in the revised financial statements provided by the
23 licensee as follows:

24 A. Direct Labor costs of \$3,821,602 were revised to report Direct Material costs of
25 \$571,921 and Direct Labor costs of \$3,249,681.

26 B. In the report provided to the client, cash flows did not begin with net loss but
27 included the net loss as a decrease in retained earnings within the cash used by operations. The
28 report provided to the Board contained the correction.

1 C. The "Decrease in Drawing - Kevin Wong", included under cash used by
2 operations in the report provided to the client, was revised to "Decrease in Payable - Kevin
3 Wong" in the report provided to the Board.

4 **Gross Negligence in Practice of Public Accountancy**
5 **(Bus. & Prof. Code § 5100(c))**

6 45. Respondents' conduct as set forth in paragraphs 38 through 44 constitutes
7 extreme departures from professional standards, constituting gross negligence in the practice of
8 public accountancy and thus providing cause for discipline of Respondents' licenses under Code
9 Sections 5100(c) and 5101.

10 **Report Not Conforming to Professional Standards**
11 **(Bus. & Prof. Code §§ 5062 and 5100(g))**

12 46. Incorporating by reference the allegations in paragraphs 38 through 44, cause for
13 discipline of Respondents' licenses exists in that the report issued did not conform to
14 professional standards, in violation of Code Section 5062.

15 **Failure to Comply with Professional Standards**
16 **(Bus. & Prof. Code § 5100(g)/Board Rule 58)**

17 47. Respondents' conduct as set forth in paragraphs 38 through 44, above, constitutes
18 several instances of non-compliance with professional standards, providing cause for discipline
19 of Respondents' licenses for violations of Rule 58 in conjunction with Code Section 5100(g) and
20 Code Section 5101.

21 **Providing Altered Records to the Board**
22 **Dishonesty in the Practice of Public Accountancy**
23 **(Bus. and Prof. Code Section 5100(c))**

24 **and**
25 **Violation of Requirement to Provide True and Accurate Information**
26 **and Responses to Board**
27 **(Bus. and Prof. Code Section 5100(g)/Board Rule 52)**

28 **and**
29 **Unprofessional Conduct**
30 **(Bus. & Prof. Code Section 5100)**

31 48. Incorporating herein the matters alleged in paragraphs 43 and 44 above, cause for
32 discipline of Respondents' licenses exists in that they provided altered or false documents to the

1 Board in violations of Code Section 5100 (unprofessional conduct); Code Section 5100(c)
2 (dishonesty in the practice of public accountancy); and/or Board rule 52 in conjunction with
3 Code Section 5100(g) (false information provided to the Board).

4 **1999 Compiled Financial Statements for**
5 **KRW Enterprises dba KW Construction**

6 49. Respondent Guerrero, through Respondent firm Villanueva & Guerrero, compiled
7 the financial statements of KRW Enterprises, a corporation, dba KW Construction for the year
8 ended December 31, 1999, and issued a compilation report. The compilation report issued by
9 Respondents failed to conform to professional standards, in violation of AR100.04, APB No. 20,
10 FAS 95, and AU § 411, as follows:

11 A. The compilation report was not modified for the exclusion of required disclosures
12 (the nature of the prior period adjustment).

13 B. The compilation report was not modified for the improper presentation of cash
14 flows (notes payable to bank was included in cash flows from operations rather than financing
15 activities, and "Cash Flows from Other Activities" was included in cash flow statement).

16 50. The Respondent firm failed to maintain a system of quality control in conducting
17 the accounting practice, as required by AR 100.54. A firm should establish quality control
18 policies and procedures to provide it with reasonable assurance that its personnel comply with
19 SSARS in its review and compilation engagements.

20 **Gross Negligence in Practice of Public Accountancy**
21 **(Bus. & Prof. Code § 5100(c))**

22 51. Respondents' conduct as set forth in paragraphs 49 and 50 constitutes extreme
23 departures from professional standards, constituting gross negligence in the practice of public
24 accountancy and thus providing cause for discipline of Respondents' licenses under Code
25 Sections 5100(c) and 5101.

26 ///

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1 **Failure to Comply with Professional Standards**
2 **(Bus. & Prof. Code § 5100(g)/ Board Rule 58)**

3 52. Respondents' conduct as set forth in paragraphs 49 and 50 above constitutes
4 several instances of non-compliance with professional standards, providing cause for discipline
5 of Respondents' licenses for violations of Rule 58 in conjunction with Code Section 5100(g) and
6 Code Section 5101.

7 **Report Not Conforming to Professional Standards**
8 **(Bus. & Prof. Code §§ 5062 and 5100(g))**

9 53. Incorporating by reference the allegations in paragraph 49 above, cause for
10 discipline of Respondents' licenses exists in that the report issued did not conform to
11 professional standards, in violation of Code Section 5062.

12 **ADDITIONAL CAUSES FOR DISCIPLINE**
13 **Governmental Audit Continuing Education Requirements**
14 **Failure to Complete Requirement for CE**
15 **(Bus. & Prof. Code § 5100(g)/Board Rule 87)**
16 **and**
17 **Violation of GAGAS Requirement**
18 **(Bus. & Prof. Code § 5100(g)/Board Rule 58)**

19 54. Respondent Guerrero, who engaged in the planning, directing, conducting
20 substantial portions of field work, or reporting on financial or compliance audits of governmental
21 agencies within the 2-year period immediately preceding the license renewal period ending on
22 December 31, 2002, failed to complete 80 hours of qualifying continuing education in the two-
23 year period ending December 31, 2002, and also failed to complete 24 hours of the required 80
24 hours of qualifying continuing education for that period in the areas of governmental accounting,
25 auditing, or related subjects in that period.

26 55. Respondent Guerrero's conduct as set forth in paragraph 54 above, constitutes
27 conduct in violation of 16 CCR § 87 and therefore unprofessional conduct within the meaning of
28 Code section 5100(g).

 56. Respondent Guerrero's conduct as set forth in paragraph 54, above, constitutes the
violation of the GAGAS requirements for continuing education, in violation of Board Rule 58

1 which requires the observance of professional standards by Board licensees, and therefore
2 constitutes unprofessional conduct within the meaning of Code section 5100(g).

3 57. Incorporating by reference the matters alleged in paragraph 54 above, cause for
4 discipline of Respondent Partnership's license exists in that it has failed to comply with the
5 GAGAS requirement that the audit organization implement a program to ensure that auditors
6 meet the GAGAS continuing education and training requirements, in violation of Board Rule 58,
7 therefore constituting unprofessional conduct within the meaning of Code section 5100(g).

8 **Failure to Obtain External Quality Control Review**
9 **Failure to Comply with Professional Standards**
(Bus. & Prof. Code § 5100(g)/Board Rule 58)

10 58. Respondents have engaged in performing independent audits, required to be
11 conducted in accordance with generally accepted auditing standards, generally accepted
12 government auditing standards, the Audit and Accounting Guide for State and Local
13 Governmental Units, and/or other applicable professional auditing standards for at least three (3)
14 years prior to March 12, 2003. Respondents were required, but failed to obtain, an external
15 quality control review to provide reasonable assurance that established policies and procedures
16 and applicable auditing standards are being followed as required by *Yellow Book* §§ 3.30 and
17 3.31.

18 59. Respondents' conduct as set forth in paragraph 58 above, constitutes a failure to
19 comply with professional standards within the meaning of 16 CCR § 58 and therefore
20 unprofessional conduct within the meaning of Code section 5100(g).

21 **CAUSES FOR DISCIPLINE OF PARTNERSHIP LICENSE**

22 60. Incorporating by reference the allegations in paragraphs 16 through 59, the causes
23 for discipline stated in each establish cause for the discipline of Respondent Partnership's license
24 under Code section 5101.

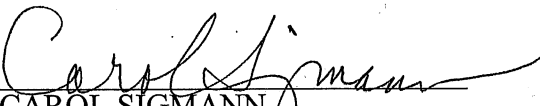
25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein
27 alleged and that, following the hearing, the California Board of Accountancy issue a decision:

28 1. Revoking, suspending, or otherwise imposing discipline on Certified

- 1 Public Accountant Certificate Number CPA 53774, issued to Cesar Estrada Guerrero;
2 2. Revoking, suspending, or otherwise imposing discipline on Accountancy
3 Partnership Certificate Number PAR 6297, issued to Villanueva & Guerrero;
4 3. Ordering Cesar Estrada Guerrero and Villanueva & Guerrero to pay the
5 California Board of Accountancy the reasonable costs of the investigation and enforcement of
6 this case, pursuant to Business and Professions Code section 5107; and
7 4. Taking such other and further action as may be deemed necessary or
8 proper.

9 DATED: September 29, 2004.

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11 
12 CAROL SIGMANN
13 Executive Officer
14 California Board of Accountancy
15 Department of Consumer Affairs
16 State of California

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Complainant

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